IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 4TH OCTOBER 2007 / 12TH ASWINA 1929

Bail Appl..No. 5987 of 2007()

[CRIME NO.505/07 OF THE KOTTIYAM POLICE STATION]

: PETITIONERS/ACCUSED NOS.5 TO 7

1. LALU, S/O. GOPALAKRISHNAN,
ATTUKALIL PUTHUVALALIL, AKKOLIL CHERRY,
ERAVIPURAM, KOLLAM.

2. SABU, S/O. BABU,
NEDIYAZHIKAM, AKKOLIL CHERRY, ERAVIPURAM,
KOLLAM.

3. MANIKANDAN, S/O. DEVADAS,
CHARUVILA VEEDU, AKKOLIL CHERRY, ERAVIPURAM,
KOLLAM.

BY ADV. SRI.C.RAJENDRAN

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
THE KOTTIYAM POLICE STATION, THROUGH THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 04/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.5987 of 2007

Dated this the 4th day of October 2007

O R D E R

Application for anticipatory bail. The petitioners are accused 5 to 7. Altogether there are seven accused persons. Accused 1 to 4 have already been arrested and released on bail. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The crime is registered for offences punishable under Sections 143, 144 and 120B read with 149 I.P.C. There is also an allegation raised under Section 27 of the Arms Act. The gravamen of the allegations against the petitioners is that they, who belong to the R.S.S, had conspired together and had armed themselves with dangerous weapons like iron rodes, chilly powder etc. They were allegedly planning to attack persons belonging to N.D.F. There was an earlier incident in which the N.D.F had attacked one person belonging to R.S.S. On receipt of information, the police reached the scene. Accused 1 to 4 were arrested. The petitioners could not be arrested. Investigation is in progress.

3. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. False allegations have been raised vexatiously against the petitioners. The allegations can reveal only the non-bailable offence under Section 27 of the Arms Act. The petitioners may, in these circumstances, be granted anticipatory bail, it is prayed.

4. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the offence alleged under Section 120B I.P.C is also non-bailable offence, as the very specific allegation is that the petitioners had conspired together to mount an attack on the N.D.F and to do away with them. It is for that purpose, it is alleged, that the petitioners were conspiring and remaining together at the scene of apprehension. The alleged incident had taken place on 2/9/2007. The petitioners have not been arrested so far.

5. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. In coming to this conclusion, I have taken note of the nature and gravity of the allegations, quantum and quality of the data collected as also the stage of investigation. I am unable to find any features in this

case which can persuade this court to invoke the extraordinary equitable discretion under Section 438 Cr.P.C. The petitioners must surrender before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

6. In the result, this petition is dismissed. Needless to say, if the petitioners surrender before the investigating officer or the learned Magistrate and apply for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr // True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007